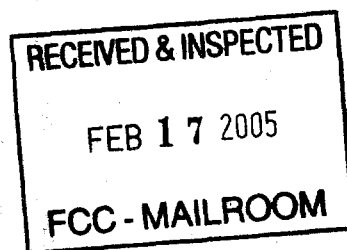




Educational Consortium for
Telecommunications Savings

LETTER OF APPEAL YEAR 2004-2005

February 8, 2005



Request for Review

Federal Communications Commission
Office of Secretary
445 12th Street, SW
Washington, DC 20554

Subject: Administrator's Decision on Appeal of Funding Year 2004-2005
Dated: December 14, 2004

Applicant Name: Bath School District
Form 471 Number: 394135
Funding Year 7: 07/01/2004 – 06/30/2005
Billed Entity Number: 121554
CC Docket No. 02-6

Contact Information: Thomas L. Miller
133 N. State Street
Newtown, PA 18940
Voice Number: 215-504-5043
Fax Number: 215-504-5047
e-mail: tmiller@e-rate-ects.org

Dear Reader:

This letter is to timely appeal the SLD's decision not to fund FRN number 00001089084. We are requesting that the decision not to fund this request be reversed and that funding be approved for this FRN.

This funding request was denied because, "the 470 cited does not include service of this type (Internet Access); therefore it does not meet the 28 day competitive bidding requirement". The appeal was denied (*See Attachment A*)

We are appealing to the FCC because the SLD review did not address the issue we raised in our appeal.

As we explained in our appeal to SLD (*See Attachment B*) this is not an "Establishing 470 Issue" but a 471 "Block 5 Category Issue". The Establishing 470 application procedure was correctly followed. We are asking that a Block 5 category change be made from "Internet Access" to "Telecommunication" be made. This request is not unusual. The SLD has made this kind of Category change when requested by schools.

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We are asking that in the spirit and intent of the E-rate Program, that the SLD be consistent in making its decisions and that the category of "Internet Access" be changed to the category of "Telecommunications Service". If this category change is not made it will mean that the Bath School District is being treated differently from other schools and held to a different standard which would not be fair. The Bath School District is funded at 67% discount and these funds really do make a difference. The Bath School District is requesting that this Funding request decision to deny this funding for \$17,053.40 be reversed and approved for this funding year of 2004-2005.

Please contact me should you need any additional information.
I have been the authorized contact person on this application throughout. Thank you.

Sincerely,

Certification # 7003 2260 0004 4901 9472



Thomas L. Miller
for Bath School District

Return Receipt Requested



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal
Funding Year 2004-2005

December 14, 2004

(Attachment A)

Thomas L. Miller
Educational Consortium for Telecommunications Savings
133 N. State Street
Newtown, PA 18940

Re: Applicant Name: Bath School District
 Billed Entity Number: 121554
 Form 471 Application Number: 394135
 Funding Request Number(s): 1089094
 Your Correspondence Dated: July 20, 2004

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of SLD's Funding Year 2004 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number: 1089094
Decision on Appeal: **Denied in full**
Explanation:

- You have stated on appeal that the funding request is for an ATM line to be used by the school district for data service. The school purchased this service from a state master contract posted by the State of Maine and the state did file a 470 a waited the 29 days before entering into an agreement for the requested service, adhering to the e-rate rules. You state that the 470 service category is Telecommunications and the state complied with all the bidding regulations. The option to use the service as either voice or data was at the discretion of each of the participating school districts. You state that when the district's 471 was filed the usage of the service was reflected by listing the funding request in the Internet Access category and this issue was brought to your attention during the PIA review of the application. You requested that the category of service be changed from Internet Access to Telecommunications as the SLD routinely makes this kind of category change at the request of schools. You close by stating that you see the issue to be a Block 5 category problem and not an establishing 470 problem.

- After thorough review of the appeal letter and all relevant documentation, it was determined that the Item 21 support documentation submitted for this request validates the service as being for Internet Access data service (which you have confirmed in your appeal). It was also determined that the cited Form 470 (Application Number: 939290000301535) did not include services of this type. According to the program rules, services ordered on the Form 471 must be posted on the SLD website in order to comply with the support mechanism's competitive bidding requirement. During the course of the initial review of your Form 471, you were contacted via email and facsimile on June 8, 2004, and were informed that the cited Form 470 did not post for the requested Internet Access, which is a violation of the competitive bidding requirements of this support mechanism. You were asked at that time to provide the establishing Form 470 for the requested service, and confirmed that the establishing Form 470 (which was for a State Master Contract) was the correct Form 470, which was posted for that particular service for 28 days, and pursuant to which a contract was signed or an agreement was entered into. You verified this in a fax dated June 8, 2004. Since Form 470 did not post for the requested Internet Access service, Bath School District is not in compliance with the program bidding requirements. It is the responsibility of the applicant to ensure that all Forms are submitted to the SLD in a timely and correct manner. Consequently, the appeal is denied.
- FCC rules require that except under limited circumstances, all services ordered on the Form 471 be posted on the website for 28 days, and that applicants carefully consider all bids received before selecting a vendor, entering into an agreement or signing a contract, and signing and submitting a Form 471. See 47 C.F.R. §§ 54.504; 54.511(a), (c). These competitive bidding requirements help ensure that applicants receive the lowest pre-discount price from vendors. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Reconsideration, 12 FCC Rcd 10095, 10098 ¶ 9 (1997). The only exceptions to the posting requirement are for: (1) contracts signed on or before July 10, 1997 for the life of the contract; (2) contracts signed between July 10, 1997 and before January 30, 1998 (the date on which the website became operational) for services provided through June 30, 1999. See 47 C.F.R. § 54.511(c); *Fifth Reconsideration Order*, 13 FCC Rcd at 14916 *Fifth Reconsideration Order*, 13 FCC Rcd at 14916 ¶ 2, and 14920 ¶ 8 (extending Year One funding period through June 30, 1999).

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the Federal Communications Commission (FCC). For appeals that have been denied in full, partially approved, dismissed, or cancelled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.



Educational Consortium for
Telecommunications Savings

**LETTER OF APPEAL
YEAR 2004-2005**

(Attachment B)

July 20, 2004

Letter of Appeal
Schools and Libraries Division
Box 125 – Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

Subject: Appeal of Funding Commitment Letter Dated June 22, 2004

Applicant Name: Bath School District
Form 471 Number: 394135
Funding Year 7: 07/01/2004 – 06/30/2005
Billed Entity Number: 121554

Contact Information: Thomas L. Miller
133 N. State Street
Newtown, PA 18940
Voice Number: 215-504-5043
Fax Number: 215-504-5047
e-mail: tommillerects@e-rate-ects.org

Dear Reader:

This letter is to timely appeal the SLD's decision not to fund FRN number 00001089084. We are requesting that the decision not to fund this request be reversed and that funding be approved for this FRN.

This funding request was denied because, "the 470 cited does not include service of this type (Internet Access); therefore it does not meet the 28 day competitive bidding requirement".

This funding request is for an ATM line to be used by the School District for Data service, the line is provided by Verizon Inc. The Bath School District purchased this ATM service from a master contract posted by the State of Maine. The State did file a 470 and waited 29 days before entering into a contract agreement for the requested service, adhering to the E-rate rules. The establishing 470 category was for Telecommunications Service and the State complied with all bidding regulations. The option to use this service for either Voice or Data was at the discretion of each of the participating school districts. The State contract was awarded on 01-05-2001 (allowable contract date 11-23-2000) and expires on 01-09-2006.

470 # 939290000301535

Bath School District

Page 2

When the District's 471 was posted, the usage of this ATM line (for Data Service) was reflected by listing this funding request in the "Internet Access" category.

Because the ATM Service was listed under "Internet Access" on the 471 394135 and the Establishing 470 listed the service under "Telecommunications, the category issue was brought to our attention during the review process. We had requested that a category change be made from "Internet Access" to "Telecommunications". This category change was not an unusual request. The SLD routinely makes this kind of category change request for schools..

We requested a follow-up contact by the SLD reviewer to be made if this request was not possible or if further clarification was necessary. We were never contacted again, assuming that the requested change would be honored. When we receive the funding approval letter and saw that the funding request was denied we decided to file this appeal.

We see this to be strictly a "471 Block 5 Category" issue and not an "Establishing 470" issue, which was the stated reason for the denial in the "Funding Commitment Report". No Service Provider was effected or prevented from posting a bid for this ATM service. The State met all of the 470 bid proposal requirements.

We are asking that in the spirit and intent of the E-rate Program, that the SLD be consistent in making its decisions and that the category of "Internet Access" be changed to the category of "Telecommunications Service". If this category change is not made it will mean that the Bath School District is being treated differently from other schools and held to a different standard which would not be fair. The Bath School District is funded at 67% discount and these funds really do make a difference. The Bath School District is requesting that this Funding request decision to deny this funding for \$17,053.40 be reversed and approved for this funding year of 2004-2005.

Please contact me should you need any additional information. I have been the authorized contact person on this application throughout. Thank you.

Sincerely,

Thomas L. Miller
for Bath School District

Certification # 7004 0750 0002 5527 0558 Return receipt requested